



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/23/05	Bill No:	AB 575
Tax:	Covered Electronic Waste Recycling Fee	Author:	Wolk
Related Bills:			

BILL SUMMARY

This bill would authorize a retailer to elect to pay the covered electronic waste recycling fee (fee) on behalf of the consumer by paying the fee to the retailer's vendor if specified conditions are met. A vendor would be defined to mean a person that makes a sale of a covered electronic device (CED) to a consumer under a lease that is a continuing sale and purchase.

Summary of Amendments

The amendments to this bill since the previous analysis declare that it is to take effect immediately as an urgency statute, and make other non-substantive technical changes.

ANALYSIS

Current Law

Under existing law, the Electronic Waste Recycling Act of 2003 (Ewaste Act) requires a consumer to pay a fee upon the purchase of a new or refurbished CED in specified amounts. Unless otherwise provided, a retailer is required to collect a fee from the consumer at the time of the retail sale of the CED.

A "retailer" is defined to mean a person who makes a retail sale of a new or refurbished covered electronic device. A "retail sale" is defined to mean a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. A sale means and includes, among other things, any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except as otherwise provided.

A retailer is authorized to retain 3 percent of the fee as reimbursement for all costs associated with the collection of the fee and is required to transmit the remainder of the fee to the BOE. The fees paid to the BOE are deposited in the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund.

Proposed Law

This bill would amend Section 42464 of the Public Resources Code to allow a retailer to elect to pay the fee on behalf of the consumer by paying the fee to the retailer's vendor, but only if all of the following conditions are met:

- The vendor is registered with the BOE to collect and remit the fee.
- The vendor holds a valid seller's permit for sales and use tax purposes.
- The retailer paid the fee to the vendor that must be separately stated on the vendor's invoice to the retailer.
- The retailer provides an express statement on the invoice, contract, or other record documenting the sale given to the consumer, that the fee has been paid on behalf of the consumer.

If all four conditions are met, the fee would be a debt owed by the vendor to the state, and the retailer would not be liable for the fee.

A vendor would be authorized to retain 3 percent of the fee, in lieu of the retailer, as reimbursement for all costs associated with the collection of the fee if a retailer makes an election to pay the fee to the vendor, and the specified conditions are met. The vendor would be required to transmit the remainder of the fee to the BOE.

This bill would amend Section 42463 to define a "vendor" to mean a person that makes a sale of a CED for the purpose of resale to a retailer who is the lessor of the CED to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1(commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

This bill would also amend Section 42464.2 to provide that a reference in the Fee Collection Procedures Law to "feepayer" would include a vendor in the case of a retailer's election to pay the fee on behalf of the consumer by paying the fee to the vendor.

And lastly, this bill would add Section 42464.8 to allow the BOE to disclose the name, address, account number, and account status of a person registered with the BOE to collect and remit the fee.

This bill contains an urgency clause and would become effective immediately.

Background

In 2003, Senate Bill 20 (Sher, Ch. 526) enacted the Electronic Waste Recycling Act of 2003. Among other things, the Act imposed, on and after July 1, 2004, a fee upon the first sale in the state of a covered electronic device to a consumer by a retailer. The Act authorized the California Integrated Waste Management Board to contract with the BOE or another party for collection of the fee.

However, Assembly Bill 901 (Jackson, Ch. 84, Stats. 2004) extended the operative date for the fee from July 1, 2004, to November 1, 2004.

In 2004, Senate Bill 50 (Sher, Ch. 863) made several clarifying changes to the fee and again extended the operative date for the fee by two months to January 1, 2005. The August 18, 2004, version of Senate Bill 50 contained similar provisions to those in proposed in this measure. However, they were subsequently amended out of that bill.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Equipment Leasing Association (ELA) and is intended to resolve fee calculation and collection difficulties unique to commercial equipment leasing.

According to the ELA, commercial equipment lessors that are defined as retailers pursuant to the Ewaste Act do not maintain an inventory and never take physical possession of the equipment they lease. These commercial equipment lessors are essentially a “financing source” for leased equipment that is usually shipped from a supplier’s (i.e. manufacturer, vendor or distributor) inventory directly to a lessee. Since the commercial equipment lessors never take possession of the leased equipment, they must rely on the descriptions and information contained in vendor invoices for the purpose of imposing the fee. However, these invoices often lack the details necessary for the commercial equipment lessor to determine if and how the fee should apply to its lease agreement. Additionally, most leases provide for “quiet possession by lessee” which does not allow a lessor to access equipment for inspection or gain descriptive details. As such, the current law hinders good faith efforts by equipment lessors to collect the fees.

2. **The May 23, 2005, amendments** declare that the bill is to take effect immediately as an urgency statute, and make other non-substantive technical changes.

The April 18, 2005, amendments incorporate BOE staff suggested amendments to revise the conditions for a retailer’s election to pay the fee on behalf of the consumer to the retailer’s vendor, allow a vendor to retain 3 percent of the fee as reimbursement for all costs associated with the collection of the fee pursuant to a retailer election, allow the BOE to disclose specified fee payer information, and make other clarifying changes.

3. **This bill should contain a specific appropriation to the Board.** This bill proposes to allow a retailer to elect to pay the fee on behalf of the consumer by paying the fee to the retailer’s vendor if specified conditions are met. To implement this provision, the Board would need to rewrite computer programs, revise returns and publications, and answer inquiries from the public in 2005, which is in the middle of the state’s 2005-06 fiscal year. To cover these administrative start-up costs, the Board would need an adequate appropriation that would not already be identified in the Board’s 2005-06 budget.

4. **Why make an exception to the confidentiality statutes?** In part, Section 55381 of the Fee Collection Procedures Law (Rev. & Tax Code, §55001 et seq.), the administrative provisions under which the BOE collects the fee, provides it is unlawful for the BOE to make known the business affairs, operations, or any other information pertaining to a fee payer which was submitted to the BOE in a report or return, or to permit any report or copy thereof to be seen or examined by any person not expressly authorized.

This bill would provide an exception to Section 55381 to allow the BOE to disclose the name, address, account number, and account status of a person registered to collect and remit the fee. This exception would allow a retailer/lessor to verify that a vendor is registered with the BOE for purposes of the fee, which is a condition to an election. The information disclosed would be similar to what is disclosed under the

sales and use tax law, which includes business name, address, account number and account status.

5. **This bill limits the election to lessors.** A retailer would only be authorized to make an election to pay the fee on behalf of the consumer by paying the fee to its vendor. A vendor would be defined to mean a person who makes a sale of a CED for the purpose of resale to a retailer who is the lessor of the CED. The sponsor of this measure intended to limit application of the election to purchases of leased equipment so as not to create unintentional consequences to other industries. Limiting the election to lessors also makes the provisions of this measure manageable for BOE audit staff.

If this election was open to all fee payers, it could hinder the BOE's ability to audit and verify payment and liability of the fee. For example, a manufacturer pays the fee on behalf the consumer when it sells a CED to a wholesaler. Before the CED is finally sold to a consumer, it is purchased and sold by another wholesaler. Although the sales invoice includes an express statement that the fee has been paid on behalf of the consumer, it would be burdensome to audit up the distribution chain to verify payment of the fee.

Furthermore, it could potentially lead to abuse where an express statement appears on invoices throughout the distribution chain where the fee has not been paid. This would lead to an unexpected liability for a retailer if that retailer relies on the express statement provided on its purchase invoice and does not remit a fee to the BOE.

6. **The provisions of the bill would not be problematic to administer.** This measure would not be problematic for the BOE to administer.

COST ESTIMATE

Some administrative costs may be incurred in identifying and registering additional fee payers, rewriting computer programs, processing additional returns and payments, revising returns and publications, and answering inquires from the public. A detailed estimate of these costs is pending; however, these costs are anticipated to be minor (over \$10,000 and under \$50,000).

REVENUE ESTIMATE

The provisions of this bill could have a positive impact on the fees collected due to addressing the fee collection difficulties encountered in commercial equipment leasing. However, the BOE has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

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